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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,757	12/14/2001	Scott W. Corzine	10010430-1	2523

7590 05/05/2003

AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland, CO 80537-0599

EXAMINER

PRITCHETT, JOSHUA L

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/022,757

Applicant(s)

CORZINE ET AL.

Examiner

Joshua L Pritchett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

The action is in response to Amendment B filed April 15, 2003.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tayebati in view of Kudo and Baillargeon.

Claims 12-20 are rejected for the same reasons discussed in the Previous Office Action (Paper No. 5) on pages 2-4.

### ***Response to Arguments***

Applicant's arguments filed April 15, 2003 have been fully considered but they are not persuasive.

On pages 4-5 of Amendment B applicant argues that there is no motivation to combine the teachings of Tayebati and Baillargeon. The examiner disagrees, Tayebati and Baillargeon both involve light emitters with a GaAs substrate and air gaps between layers. The examiner

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considers the removal of the cladding of Baillargeon as taught in col. 5 lines 47-48 as creating air gaps where the cladding was previously located.

On page 5 of Amendment B applicant argues that combination of Tayebati and Baillargeon will not result in a working device. The examiner disagrees, the addition of the support structure of Baillargeon to the Tayebati reference would not completely eliminate the ability of the layers of Tayebati to move. The center portions of the Tayebati layers may still move once the support structure of Baillargeon is added.

On page 5 of Amendment B applicant argues that the layers 18 and 20 of Baillargeon are not support layers. The examiner disagrees, although the layers 18 and 20 are not explicitly referred to as support layers they still serve the same function as support layers. Fig. 1 clearly shows layers 18 and 20 acting as support layers for the mesa structure of Baillargeon.

On page 6 of Amendment B applicant argues that the support layer taught by Baillargeon is not electrically conductive. The examiner disagrees, layer 20 is electrically conductive (col. 5 line 18).

On pages 7-8 of Amendment B applicant argues that the Baillargeon support layers do not cover a portion of the sidewalls, but instead cover the entire structure. The examiner agrees that the Baillargeon reference teaches support layers that cover the entire structure, but the claim limitation does not state that the support layer must cover only a portion of the structure. By covering the whole structure the support layers of Baillargeon inherently cover a portion of the structure.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L Pritchett whose telephone number is 703-305-7917. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on 703-308-1687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

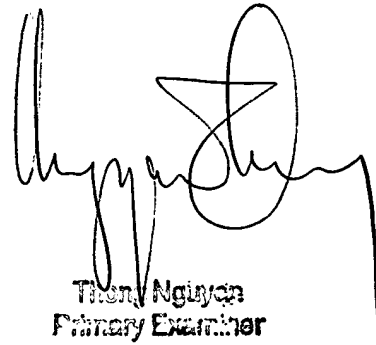
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JLP

April 30, 2003



Thien Nguyen  
Primary Examiner